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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,335	06/30/2003	Haru Ando	500.42880X00	8770
24956	7590	05/30/2006	EXAMINER	
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.			FRISBY, KESHA	
1800 DIAGONAL ROAD			ART UNIT	
SUITE 370			PAPER NUMBER	
ALEXANDRIA, VA 22314			3715	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/608,335	<b>Applicant(s)</b> ANDO ET AL.	
	<b>Examiner</b> Kesha Frisby	<b>Art Unit</b> 3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 6/30/2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☒ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/30/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on 1/31/2003. It is noted, however, that applicant has not filed a certified copy of the 2003-022988 application as required by 35 U.S.C. 119(b).

### ***Information Disclosure Statement***

2. The information disclosure statement filed 6/30/2003 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the Shimoda et al. reference has not been translated in English. The information Disclosure Statement states that only the Abstract has been translated but all that has been submitted to the Office is the foreign document. The examiner states that only the Abstract has been considered for the three Japanese References (JP-A-6-289765, JP-A-5-46066 & JP-A-9-149894). It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 9 lacks antecedent basis for “said judgment”.

***Claim Objections***

4. Claims 11 & 12 are objected to because of the following informalities:  
“judgement” should be --judgment--. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-12 manipulate an Abstract Idea (learning condition judging program) without producing a “tangible” result. Claims 3-12 are nothing more than instructions being used to run this learning condition judging program. As such, the claimed invention does not process “real world” value but rather represents nothing more than an idea or preliminary starting point for obtaining data. Moreover, the claims are not tied any environment or machine. Please see MPEP 2106 for guidance.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**7. Claims 1 & 13 are rejected under 35 U.S.C. 102(b) as being anticipated by**

**Atsushi (Publication Number 09-149894: English Computer Translation from the**

**Patent of Abstracts of Japan).** Referring to claim 1, Atsushi discloses starting up a

learning program in said information processing apparatus (abstract: problem to be

solved); acquiring measurement information of a blood flow rate in a brain a user of said

information processing apparatus, said measurement information being obtained from

near infrared measuring device through information acquiring means (abstract &

Drawings 1 & 6); acquiring input information (the examiner views this limitation as what

is typed via the keyboard: text input) and operation information given said user to said

information processing apparatus through input means (the examiner views this

limitation as the strokes made via the keyboard); storing storage said measurement

information, said input information and said operation progress of said learning program

(storage device 22); and sending out information stored in said storage connected

external device (Drawing 6 & external device 23).

Referring to claim 13, Atsushi discloses a near infrared measuring device

(measurement device 17), terminal connected said near infrared measuring device

(external device 23), and a server connected to said terminal through said recording

contents information (Drawing 6); said terminal including: means acquiring information

from said infrared measuring device (Drawing 6); display for displaying said contents

information received from said server (it is inherent that a computer has a display); and

input means for accepting input instructions (the examiner views this limitation as what

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is typed via the keyboard: text input) and operation instructions for said displayed information (the examiner views this limitation as the strokes made via the keyboard); said server further including; a storage for storing inputs from said input means, said information from said near infrared measuring device, and said displayed contents information in association with one another (storage 22); and means for judging conditions of terminal user's tackling said contents, based on information stored in said storage means (arithmetic unit 21).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Atsushi in view of Ho et al. (U.S. Patent Number 5,944,530).** Referring to claim 2, Atsushi discloses a learning condition judging program according to claim 1. *Atsushi does not disclose acquiring audio or video information said of said information processing apparatus through at least one of a microphone and camera connected to said information processing apparatus; wherein said audio or video information is also recorded in said storing step.* However, Ho et al. teaches acquiring audio or video information said of said information processing apparatus through at least one of a microphone and camera (digital camera 180) connected to said information processing apparatus (Fig. 2B); wherein said audio or video information is also recorded in said

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storing step (Fig. 2B: main memory 162 & column 10 lines 40, 41 & 43-47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include acquiring audio and video information, as disclosed by Ho et al., incorporated into Atsushi in order to take numerous images of the student's face.

**10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Atsushi in view of Fumio (Publication Number 05-046066: English Computer Translation from the Patent of Abstracts of Japan).** Referring to claim 3, Atsushi discloses acquiring, through input means, information contents executed in a connected terminal (abstract), information of a blood flow rate in a brain of a user of said terminal (abstract & Drawings 1 & 6), and operation information (the examiner views this limitation as the strokes made via the keyboard) and input information given said user to said terminal (the examiner views this limitation as what is typed via the keyboard: text input); analyzing rate change hemoglobin concentration from said blood flow rate (for example, paragraph 0006: hemoglobin concentration change); and storing information said degree of concentration association with said contents (storage device 22). *Atsushi does not disclose judging a degree of concentration said user said terminal from operation and input information and said analyzed rate of change in hemoglobin concentration.* However, Fumio teaches judging a degree of concentration said user said terminal from operation and input information and said analyzed rate of change in hemoglobin concentration (for example, paragraph 0007). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include judging a

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degree of concentration, as disclosed by Fumio, incorporated into Atsushi in order to a student's degree-of-concentration during a student's education.

**11. Claims 4-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atsushi/Fumio and further in view of Ho et al..** Referring to claim 4, Atsushi/Fumio discloses a learning condition judging program according to claim 3. *Atsushi/Fumio does not disclose further comprising the step displaying said information of said degree of concentration on display.* However, Ho et al. teaches further comprising the step displaying said information of said degree of concentration on display (for example, column 10: the examiner views this limitation as if the student has maintained and/or lost concentration; this is measured through the displayed camera images). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include displaying information, as disclosed by Ho et al., incorporated into Atsushi/Fumio in order to make everyone aware of whether of the student's degree of concentration.

Referring to claim 5, Atsushi/Fumio discloses a learning condition judging program according to claim 3. *Atsushi/Fumio does not disclose acquiring audio or video information said of said information processing apparatus through at least one of a microphone and camera connected to said information processing apparatus; wherein said audio or video information is also recorded in said storing step.* However, Ho et al. teaches acquiring audio or video information said of said information processing apparatus through at least one of a microphone and camera (digital camera 180) connected to said information processing apparatus (Fig. 2B); wherein said audio or



video information is also recorded in said storing step (Fig. 2B: main memory 162 & column 10 lines 40, 41 & 43-47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include acquiring audio and video information, as disclosed by Ho et al., incorporated into Atsushi/Fumio in order to take numerous images of the student's face.

Referring to claim 6, Atsushi/Fumio, as modified by Ho et al., teaches acquiring audio or video information said of said information processing apparatus through at least one of a microphone and camera (digital camera 180 of Ho et al.) connected to said information processing apparatus (Fig. 2B of Ho et al.); wherein said audio or video information is also recorded in said storing step (Fig. 2B: main memory 162 & column 10 lines 40, 41 & 43-47 of Ho et al.).

Referring to claim 7, Atsushi/Fumio discloses a learning condition judging program according to claim 3. Atsushi/Fumio does not disclose giving notice to said user of said terminal in accordance with a result of said step of judging said degree of concentration. However, Ho et al. teaches giving notice to said user of said terminal in accordance with a result of said step of judging said degree of concentration (column 10 line 66-column 11 line 56 and more specific column 11 lines 34-47 of Ho et al.). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include giving notice, as disclosed by Ho et al., incorporated into Atsushi/Fumio in order to provide an indication on the student's concentration.

Referring to claim 8, Atsushi/Fumio, as modified by Ho et al., teaches giving notice to said user of said terminal in accordance with a result of said step of judging said degree

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of concentration (column 10 line 66-column 11 line 56 and more specific column 11 lines 34-47 of Ho et al.).

Referring to claims 9 & 10, Atsushi/Fumio, as modified by Ho et al., teaches further comprising a step of judging whether said input information is a correct answer to an exercise included in said learning contents or not is further provided (column 12 lines 17-30 of Ho et al.); and said concentration degree judging step makes said judgment also using a result of said answer judging means (column 10 lines 23-25 & column 12 lines 31 & 32: the examiner views this limitation as whether the concentration degree ranges from low, medium to high of Ho et al.).

Referring to claims 11 & 12, Atsushi/Fumio, as modified by Ho et al., teaches displaying, on a display, information of said learning contents (for example, column 10: the examiner views this limitation as if the student has maintained and/or lost concentration; this is measured through the displayed camera images of Fumio), said rate of correct answers for each exercise included in said learning contents (column 11 lines 6-8), said rate of correct answers being obtained from said judgment result of said answer judging means (column 11 lines 6-8).

#### ***Citation of Pertinent Prior Art***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lesser (U.S. Patent Number 5,321,800) teaches a graphical language methodology for information display.

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Freer (U.S. Patent Number 6,402,520) teaches an electroencephalograph based biofeedback system for improving learning skills.

Dorfmeister et al. (U.S. Patent Number 5,995,868) teaches a system for the prediction rapid detection, warning, prevention, or control of changes in activity state in the brain of a subject.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kesha Frisby whose telephone number is 571-272-8774. The examiner can normally be reached on Mon. - Wed. 7-3pm, Thu. 6:30-4pm & Fri. 7-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6678. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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